

# HOUSE BILL REPORT

## ESSB 5431

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### As Reported by House Committee On: Transportation

**Title:** An act relating to positive drug or alcohol test results of commercial motor vehicle operators.

**Brief Description:** Updating laws on drugs and alcohol use by commercial drivers.

**Sponsors:** Senate Committee on Highways & Transportation (originally sponsored by Senators Oke, Prentice, Horn, Haugen and Rasmussen; by request of Department of Licensing).

#### **Brief History:**

##### **Committee Activity:**

Transportation: 2/23/04, 3/1/04 [DP].

#### **Brief Summary of Engrossed Substitute Bill**

- Requires employers of commercial drivers to report to the Department of Licensing when a commercial driver refuses to take a drug or alcohol test, if the refusal has not been reported by the medical review officer or blood alcohol technician. Specifies reporting requirements for transit employees.
- Clarifies the scope of hearings requested by drivers to challenge disqualification based on a positive drug or alcohol test.

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### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass. Signed by 20 members: Representatives Murray, Chair; Rockefeller, Vice Chair; Ericksen, Ranking Minority Member; Jarrett, Assistant Ranking Minority Member; Armstrong, Bailey, Campbell, Clibborn, Dickerson, Hankins, Kristiansen, Lovick, Mielke, Morris, Nixon, Rodne, Schindler, Shabro, Wallace and Woods.

**Minority Report:** Do not pass. Signed by 7 members: Representatives G. Simpson, Vice Chair; Cooper, Flannigan, Hatfield, Hudgins, Romero and Wood.

**Staff:** Jill Satran (786-7315).

#### **Background:**

Commercial motor carriers are required under federal law to conduct drug and alcohol testing of commercial drivers both prior, and subsequent, to employment. In 2002, state legislation was enacted requiring all medical review officers (MROs) or breath alcohol technicians

(BATs) who conduct drug and alcohol testing for commercial motor carriers to report positive tests to the Department of Licensing (DOL). A driver who wishes to challenge the result of a positive drug or alcohol test is entitled to a hearing.

The DOL is required to disqualify a commercial driver from driving a commercial motor vehicle if he or she tests positive for alcohol or drug use. The disqualification remains in effect until the appropriate period of time has expired and the DOL receives evidence of satisfactory participation in, or completion of, a drug or alcohol treatment program certified by the Department of Social and Health Services.

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**Summary of Bill:**

Definitions are provided for "positive alcohol confirmation test," "substance abuse professional," and "verified positive drug test" and the definition of "drugs" is clarified to include those substances defined in federal regulations. A report that a driver refused to take a drug or alcohol test meeting the state and federal requirements is considered to be equivalent to a report of a positive test for drugs or alcohol.

Motor carriers or employers required by federal regulation to have a testing program must report to the DOL a commercial driver's refusal to take a drug or alcohol test, when the refusal has not been reported by the MRO or BAT.

An MRO or BAT under contract with an employer involved in transit operations may only report a positive alcohol or drug test for a transit driver when the positive test is a pre-employment screening test. A transit employer is required to report a positive test to the DOL only when a driver's employment has been terminated and any grievance procedures have been concluded.

A driver's disqualification remains in effect until a driver undergoes a drug and alcohol assessment by a substance abuse professional (SAP) who meets federal requirements and the driver presents proof of satisfactory participation or completion of a drug or alcohol program, as recommended by the SAP. The SAP is required to provide a diagnostic evaluation and treatment recommendation to the DOL for use in determining a person's eligibility for driving a commercial motor vehicle.

At a hearing to challenge a driver's disqualification, evidence of a positive result with a declaration by the tester, MRO or BAT stating the accuracy of the test constitutes prima facie evidence of: 1) a positive test result; 2) the motor carrier, employer or consortium has a testing program that is subject to federal requirements; and 3) the MRO or BAT making the report accurately followed the testing protocols established for verifying or confirming results.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** This bill addresses issues that have been identified since the passage of SB 6461 in 2002. The bill removes unintended references to DSHS and makes the terminology consistent with the federal regulations. It also brings in transit drivers who were inadvertently left out of SB 6461. The bill closes a loophole that allows some drivers with a positive test on their records to simply go to another employer without that information being disclosed. The provisions in this bill are necessary to fully implement the existing law.

Current statutes conflict with federal law. The language in the existing statute could result in an individual having to complete two separate processes in order to be returned to work. That was not an intended outcome, and is only a result of inconsistent language that this bill seeks to correct.

**Testimony Against:** Transit drivers are subject to safety programs that work well as reflected by their safety record. Transit employers comply with federal requirements and there is no need to change the existing system. Under federal regulations, transit employers currently already have the right to request information about previous violations by potential employees. Pending legislation (HB 2532) codifies federal regulations that would require DOL to research prior records and no masking would be allowed. Transit employees should not be included in this bill, we are already doing a good job. Senate Bill 6461 should be repealed and all players should come together to develop language that works for everyone.

**Persons Testifying:** (In support) Judy Groezinger and Clark Holloway, Department of Licensing; Fred Fakkema, Washington State Patrol; Larry Pursely, Washington Trucking Association; Jim Callen, Bethel School District; and Pam Beltz, Compliance Solutions.

(Opposed) Jim Fitzgerald, Ike Tate, and Rick Sepolen, Amalgamated Transit Union.

**Persons Signed In To Testify But Not Testifying:** None.